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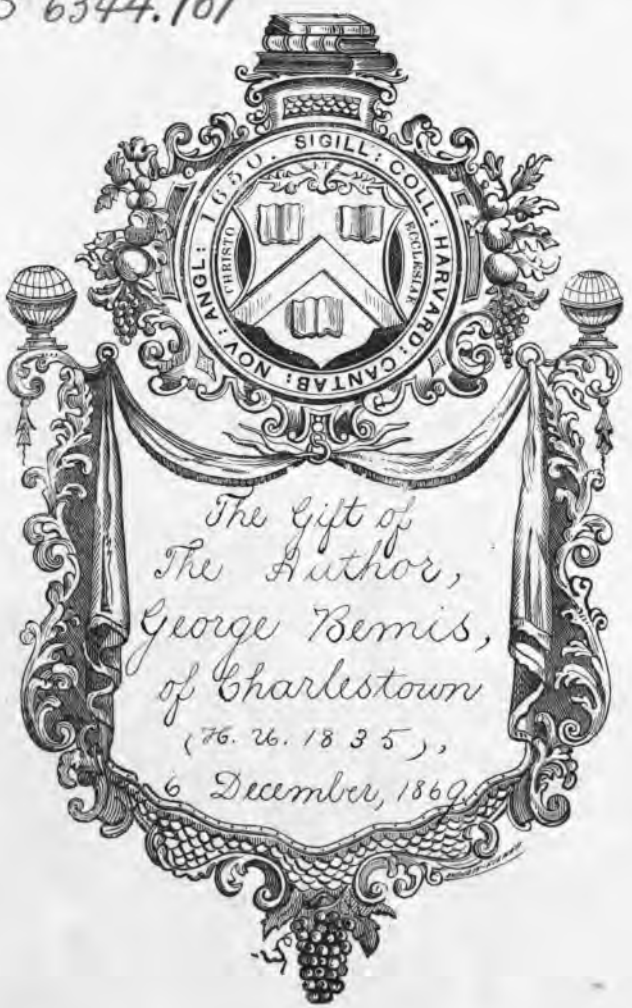

The Gift of
The Author,
George Bemis,
of Charlestown
(76. U. 1835),
6 December, 1869.

Bemis, George.

MR. REVERDY JOHNSON:

THE ALABAMA NEGOTIATIONS,

AND THEIR JUST REPUDIATION BY

THE SENATE OF THE UNITED STATES.

BY GEORGE BEMIS.

NEW YORK:
BAKER & GODWIN, PRINTERS,
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Copy of
the Author
of Charlestown
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MR. REVERDY JOHNSON:

THE ALABAMA NEGOTIATIONS.

The extraordinary avowal of Mr. Reverdy Johnson in vindication of his rejected "Alabama" convention, that the United States "*obtained, by the convention in question, all that we have ever asked*"—an avowal contained in a dispatch to Mr. Secretary Seward on the 17th of February last, but which has but recently found its way into circulation on this side of the water—is one so calculated to embarrass the country in its further negotiations with England, and to disparage American reputation abroad for fair dealing in diplomacy, that I feel called upon, as an advocate of American rights and American honor, to expose its groundlessness, and to uphold the perfect fairness and propriety of the Senate's repudiating alike Mr. Johnson's words and his works.

It is bad enough to have such a compromising assertion as this of the late Minister to England, caught up and echoed by our English opponents and European ill-wishers, generally; but to have it started by our own diplomatic representative, in the first instance, and that out of apparent pique, because the country had not approved of his doings, constitutes an offense against official propriety and national loyalty such as I believe has never before been witnessed on the part of an American Minister. I trust that the *exposé* which I am about to attempt of the justice of Mr. Johnson's extraordinary avowal, will be so conclusive, that the most charitable deduction to be made in his favor, after reading it, will be, that either his mind and memory had failed him, or that his ignorance of the subject which he was treating, may have left room for his honestly believing in the truth of what he was so rashly and unwarrantedly asserting.

The letter or dispatch of the 17th of February, referred to, contains various other obnoxious assertions of Mr. Johnson's, upon which I may have occasion to comment in the course of my remarks, such as, "at no time during the war, or since, has any branch of the Government [of the United States] proposed to hold Her Majesty's Government responsible, except to the value of the property destroyed" by the "Alabama" and similar vessels; "the Government [of the United States] never exacted anything on its own account"—"to demand more now * * * would be an entire departure from our previous course, and would, I am sure, not be listened to by this Government [the British], or countenanced by other nations," etc., etc.; and I would gladly reprint the whole of it, except for its length, and for the reason that the letter itself has, doubtless, already had a wide circulation through the American press—at least in the United States. The whole dispatch, I venture to predict, will be a memorable one in our diplomatic annals, and will hereafter set the seal of history, as I must think, upon the character of Mr. Reverdy Johnson's "Alabama" negotiations.

For the information of those of my readers who may not have happened to see it, I would say that it is to be found (at least) in the New York *Herald* of July 3, where it first met my eye, and where some editorial introduction shows that it had been recently furnished to that journal—apparently by Mr. Johnson himself—to meet, what was said to have been, "a garbled extract" from it published in some other New York newspaper. The whole letter, itself, would seem to have been laid before the Senate, in secret session and confidentially, prior to its action on the "Alabama" Convention; and I gather from other American journals (other than the *Herald*), which have happened to come within my observation here, that Mr. Johnson, before publishing it, asked the President's permission so to do. Whether President Grant actually gave that permission, or whether he could have constitutionally authorized the publication of a Senate confidential document at all, supposing him to have been indulgently inclined to grant the ex-minister's request, is more than I have ascertained; but I am confident that Mr. Reverdy Johnson's worst enemy could not have persuaded him to a more injurious step, for his own reputation, than that of thus giving this letter an unnecessary, and perhaps unjustified publicity.

Before entering upon my criticism of this extraordinary dispatch of the 17th of February, I must first premise a word of comment upon the circumstances attending Mr. Johnson's appointment as Min-

ister to England, and also call the reader's attention to the dates of the two conventions which he afterward negotiated in that capacity.

As to the appointment itself, which was made and confirmed in the early part of the month of July, 1868, I believe that even Mr. Reverdy Johnson's own friends will hardly contend that the English mission was offered to him on any other footing than as a graceful compliment for previous political services (probably, on the part of the President, for having so warmly befriended him during the Impeachment trial), or that his unanimous confirmation by the Senate afterward, was due to anything so much as to a feeling of kindly personal regard toward him on the part of his fellow-Senators, coupled with the belief that his functions would be mainly nominal and honorary. At any rate, as I shall presently have occasion to show, his original instructions, after *he was* so confirmed, gave him no latitude to do more than "*sound Lord Stanley* upon the subject" of the "Alabama" claims, and, as Mr. Seward adds, only "after the two more urgent controversies previously mentioned [the 'Naturalization' and 'San Juan' questions] can have been put under process of adjustment."

Mr. Johnson, thus confirmed and thus instructed, negotiated two conventions (or *treaties*, as they are more popularly called), viz.: one signed by Lord Stanley and himself, dated November 10, 1868, which was "unanimously" repudiated by every member of Andrew Johnson's cabinet; and a second, with Lord Clarendon, dated January 14, 1869, which was the one acted upon by the United States Senate, April 13th following, and rejected by a vote of fifty-four to one.

Now, in answer to Mr. Reverdy Johnson's assertion, that we obtained by his conventions—one or both—"all that we ever asked," I hope to show by official documents—some of them being Mr. Johnson's own dispatches—

1. That he himself was not originally authorized "to ask" for anything; instead of which he proposed, at one of his earliest interviews with Lord Stanley, "the payment of a lump sum of money," or "some cession of territory," in settlement of the Alabama claims.

2. That starting thus with asking money or territory, he dropped all mention of both in his convention of November 10th, which amounted to such a total abandonment of the American claims, national and individual, that even "President Johnson and his colleagues" (to quote Mr. Thornton's account of the reception of the treaty at Washington) "were unanimously of the opinion that in its present form the convention would not receive the sanction of the Senate," and "its contents were not in accordance with the instructions which had been given to Mr. Reverdy Johnson."

3. That Mr. Reverdy Johnson and Mr. Seward united in agreeing to the convention of January 14th following, in total oblivion or ignoring of Mr. Seward's long record of complaints about belligerent recognition and the national injury which had resulted therefrom, and when both of the negotiators were well aware that any convention to which they might put their names, or give their approval, was subject to the final sanction of that Senate which had come within one vote of deposing with disgrace the President under whom both of them at that moment held their commissions.

4. That while the consideration of the convention of January 14th was pending before the Senate, and after the administration of Andrew Johnson had given way to that of President Grant, and at a time when Mr. Reverdy Johnson knew that the new President was about recalling him, and had given him no shadow of authority for the proceeding—viz., under date of March 25, 1869—Mr. Reverdy Johnson, of his own head, "*officially*" proposed to Lord Clarendon to amend the convention then pending before the Senate by adding to its terms a consideration of the *national* claims which the United States as a Government might have against the Government of Great Britain—the very claims which he himself has undertaken to decry in this lately published letter of February 17th, as such "as would not, I am sure, be listened to by this Government [the British], or countenanced by other nations."

5. And that, finally, when Lord Clarendon begins to be distrustful of Mr. Reverdy Johnson's attempt to represent or misrepresent the United States, and demands of him by what authority he undertakes to ask for so material an alteration of his previous arrangement, Mr. Johnson replies to him that he makes the proposal "*under the ample authority conferred upon me when I came to this country and since; an authority which has never been revoked or in any particular modified:*" thus distinctly affirming that he had ample authority to negotiate for the settlement of those very national claims, which he would now make it appear had never been put forward, "during the war or since, by any branch of the Govennment."

From such a muddle of mistakes or misrecollections on the part of the American Minister as seems to be involved in the foregoing statement, which I promise presently to duly verify by official documents, the reader will doubtless be glad to be delivered, so far as may be, by a sight of Mr. Johnson's original instructions themselves. Accordingly I hasten to lay them before him, so far as they touch upon the negotiation of the Alabama question, with which alone I am now

dealing. I quote from what I believe to be an accurate reprint of them, contained in an elaborate and careful summary of the documents laid before the United States Senate at the time of acting upon the commission of January 14th, as recently published in the New York *Times* of July 6, 1869:

DEPARTMENT OF STATE,
WASHINGTON, July 20, 1868.

SIR: * * * * * * * *

[I here omit a long exposition confined exclusively to the "Naturalization" and "San Juan" questions. I shall also take the liberty to italicise the concluding lines of the extract following, as I intend to do in reference to future extracts throughout, where I think the use of italics will help the busy reader to more readily apprehend my points.]

Thirdly. If you shall find reason to expect that the British Government will be prepared to adjust the two questions already mentioned in some such manner as has been proposed, and satisfactory to both parties, you will then be expected to advert to the subject of mutual claims of citizens and subjects of the two countries against the Governments of each other respectively.

The difficulty in this respect has arisen out of our claims which are known and described in general terms as the Alabama claims. In the first place, Her Majesty's Government not only denied all national obligation to indemnify citizens of the United States for these claims, but even refused to entertain them for discussion. Subsequently Her Majesty's Government, upon reconsideration, proposed to entertain them for the purpose of referring them to arbitration, but insisted upon making them the subject of special reference, excluding from the arbitrator's consideration certain grounds which the United States deem material to a just and fair determination of the merits of the claims. The United States declined this special exception and exclusion, and thus the proposed arbitration has failed.

It seems to the President that an adjustment might now be reached without formally reviewing former discussions. A joint commission might be agreed upon for the adjustment of all claims of citizens of the United States against the British Government, and of all claims of subjects of Great Britain against the United States, upon the model of the joint commission of February 8, 1853, which commission was conducted with so much fairness, and settled so satisfactorily all the controversies which had arisen between the United States and Great Britain, from the peace of Ghent, 1814, until the date of the sitting of the convention.

While you are not authorized to commit this Government distinctly by such a proposition, you may sound Lord Stanley upon the subject, after you shall have obtained satisfactory assurances that the two more urgent controversies previously mentioned can be put under process of adjustment in the manner which I have indicated.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

REVERDY JOHNSON, Esq., &c., &c.

The last sentence of the foregoing dispatch settles the question of the extent of ministerial powers conferred by "*the original instructions of July 20th*," upon which we shall presently see that Mr. Johnson is continually dwelling. An authority "*to sound*" cannot certainly be equivalent to a power *to settle*. It may be best, however, once for all, to run through the American Minister's entire diplomatic career, so far as the matter of official discretion is concerned, in order to be

convinced of his total misappreciation of the functions with which he was charged. I doubt if such another exhibit of misrecollection or misunderstanding of his official powers (perhaps of excess of them) by a diplomatic envoy, can anywhere be found. Being originally invested, as the above extract shows, with no higher discretion than to "sound Lord Stanley," and that, too, only upon the contingency of "the two other *more urgent* controversies having first been put under process of adjustment," Mr. Johnson, after some further correspondence and sundry telegraphic communications from the State Department, which we shall presently have occasion to notice, but of which he apparently makes no account, negotiates and signs with Lord Stanley the convention of November 10th, and sends it home with an explanatory dispatch dated the same day. In the course of this dispatch, after setting forth the tenor and effect of his treaty, he adds the following remarkable explanation of his doings, as if he anticipated being called to account for exceeding his instructions. I quote again from the New York *Times*' reprint of the official correspondence, the letter *Johnson to Seward*, of November 10, 1868:

> *My authority for agreeing to this* [that is, the leaving to arbitration the "Alabama" claims in the shape which his convention had arranged for] *is found in your original instructions of the 20th of July last, and is indeed to be found in the correspondence between yourself and my predecessor regarding these claims.*

Was ever a more extraordinary avowal made by a diplomatic agent than this?—that, under a power "to sound" a foreign government, he considers himself duly authorized to sign a lasting treaty with that Government (by force of the technical term "convention," to last to all time), and, if he has not sufficient authority of himself, *he has it as successor to a predecessor who had power enough for anything!* Pray, has Mr. Reverdy Johnson, in his great practice as a lawyer, ever learned that in the law of Agency, A. B. can consider himself empowered to do whatever C. D. could have done, because both A. B. and C. D. happen to represent a common principal? Yet I have no earthly doubt that the New York *Times*' reprint of Mr. Johnson's language, as above, is accurate to the letter.

But this is by no means the worst muddle or misunderstanding made by the American envoy in the course of these negotiations, over which I am arguing the question of the Senate's duty to reconsider and reject his work.

Being sharply reminded by Mr. Seward, by an ocean telegram, that he had gone too fast and too far in negotiating this convention just referred to, Mr. Johnson rejoins, that he was "not only author-

ized," but "*bound*" to do what he had done. I quote again his exact language:

[*Johnson to Seward, Nov.* 28, 1868.]

Why you are of the opinion that the [Alabama] Claims Convention is "useless unless amended" you do not state, and I am unable to conjecture. I have just had an interview at the Foreign Office with Lord Stanley, who read me a dispatch from Her Majesty's Minister at Washington, which stated that it was understood that all the Cabinet disapprove of it, and had said that it was contrary to instructions. This latter statement puzzles me yet more. If I understand your original, and all the subsequent instructions, whether by telegraph or otherwise, the convention conforms substantially with them. *By those of the 20th of July, I considered myself authorized, if this Government would adjust, as desired, the Naturalization and San Juan controversies, to settle the claims' controversy by a convention on the model of that of February* 8, 1853. And as the two former were satisfactorily arranged, I deemed myself NOT ONLY AUTHORIZED, BUT BOUND *to adopt the course that I did in* relation to the latter.—*N. Y. Times, ut sup.*

Now, taking Mr. Johnson's own statement of his case, what can he mean by stating that the instructions of July 20, which merely suggested "a sounding," not only "authorized, *but bound* him to adopt the course that he had taken in relation to the latter" [these same Alabama Claims]? Has not Mr. Johnson failed in mind and memory; and must it not have been perceptible to his English official opponents?

But there remains a worse confusion, if possible, of powers and authority in connection with the Minister's attempt to reconcile his treaty of January 14th to Senatorial acceptance. The ratification of the convention having been kept in abeyance by the Senate till after the accession of General Grant to the Presidency, and word having reached Mr. Johnson, in England, that the treaty was not likely to be acceptable at home, on account of its omission of any mention of national claims, he sets about amending it of his own motion in the manner already suggested. Under date of March 25th, long after he must have been painfully aware of the unpopularity of his course with the coun try at large, and long after he had, doubtless, expected his recall by the newly-installed Executive, he writes to the British Foreign Secretary, Lord Clarendon, as follows. (I quote now from the British Parliamentary Blue Book for 1869, "North America," No. 1, p. 46):

* * * *I, therefore, now officially propose to your lordship* that we sign a supplemental convention, which *shall only so far alter the one of the 14th of January as to provide that the claims which either Government may have upon the other shall be included within it, and be settled in the same way.*

Lord Clarendon, by this time having, doubtless, become persuaded of the American envoy's disposition to amplify his office, demanded, in reply, whether he had the necessary authority for agreeing to so important a modification of the original treaty. To this Mr. Johnson replies in the following extraordinary letter, which, it seems to me,

caps the climax of his ministerial mistakes or muddles. (I quote again from the British Blue Book, as before, p. 47):

U. S. LEGATION, LONDON, March 29, 1869.

MY LORD:

I have the honor to receive your note of the 27th instant, and shall look with solicitude to the determination of your Government upon the proposition contained in my *official* note to you of the 25th.

That proposition was not made in pursuance of any express instructions of my Government, but *under the ample authority conferred upon me when I came to this country, and since; an authority which has never been revoked, or*, IN ANY PARTICULAR, MODIFIED.

Repeating my opinion, that the acceptance of the proposition would result in the ratification by the Senate of the Claims Convention of the 14th of January last, I have, &c.,

(Signed) REVERDY JOHNSON.

What hallucination can have seized Mr. Johnson about the extent of his original powers? Had he never read his instructions, or had he forgotten to what degree they must have been modified in order to enable his negotiation of the convention of January 14th? And yet he takes pains to assert that they have "never been revoked, or [nor], in any particular, modified." If it be suggested that his intended meaning may, in some degree, be obscured by the unfortunate grammatical expressions which he uses, and that he intends to say that he is enjoying just as much diplomatic authority on the 29th of March, under President Grant's administration, as on the 14th of January, under Andrew Johnson's, when he joined Lord Clarendon in signing the convention of that date; then what shall be said of his capacity to understand his functions when, with *no new authorization*, he undertakes to interpolate so important a clause into a State paper which had long since passed out of the sphere of his control? Especially when, as he himself avows in the continuation of the correspondence (in a letter to Lord Clarendon of April 9th, on the same subject,—Blue Book, as before, p. 49):

That I did not suggest in the negotiations which led to the convention of January the including within it any Governmental claims, was *because my instructions only referred to the individual claims of citizens and subjects.*

What was Lord Clarendon to do with an envoy who had such a strange power of stretching out his instructions, and then, when brought to the test, letting them fly back again like a piece of India-rubber—but to finally say to him, as Lord Clarendon reports to his own envoy at Washington (Blue Book, p. 49, *Clarendon to Thornton*, April 9, 1869), he did?

Mr. Johnson, [as] I said [to him] was, no doubt, acting on his instructions; but *they were the instructions given to him by the last Government, and Her Majesty's Government could not consider a communication not made by the authority of the present Government.*

I think this brief epitome of Mr. Reverdy Johnson's constructive expansion and contraction of his ministerial functions must have satisfied the reader that, if Mr. Johnson is no better a judge of the merits of his country's claims against England for her unneutral conduct during the late civil war, than he is of his own powers to treat with that Government for the settlement of those claims, his aspersion that we have obtained by his convention all that we have ever asked, and that the Government of the United States had, in effect, no case to begin with, is already well-nigh disposed of.

Before dropping this branch of my subject, however, I must remark in passing, that Mr. Reverdy Johnson's transgression of his instructions cannot for a moment be urged against us by the British Government in any future negotiations upon the same subject, because, by the very terms of the two conventions which the British Foreign Secretaries signed with him, that Government expressly admitted its obligation to inform itself of the extent of the envoy's powers. Thus, it makes a part of the recitals of both of the conventions of November 10th and January 14th, as well as of several other preliminary drafts between the negotiators, that "the Plenipotentiaries *having communicated to each other their respective full powers, found in good and due form*, have agreed as follows."

So, besides the holding back by Lord Clarendon on the subject of interpolating "Governmental claims" into the treaty, through caution of Mr. Johnson's defective powers to agree to that change, as already referred to, it is noticeable that Lord Stanley, after signing the convention of November 10th with Mr. Johnson, expressed to the British Minister at Washington his misgivings of Mr. Johnson's authority to bind his Government. Writing to Mr. Thornton after that convention had been repudiated by President Johnston's cabinet, and for the purpose, as he states, of putting upon record his own doings as Foreign Secretary in that particular, he says:

[*Stanley to Thornton, December* 8, *Blue Book ut sup.*, p. 19.]

"Matters remained in this state until the receipt of your telegram of the 27th of November, up to which time I was under the impression, which was also shared in by Mr. Johnson, that the Convention which had been signed, being in accordance with his instructions *as construed by him*, would meet with the approval of the United States Government."

Is not this significant phrase "*as construed by him*," a full admission that the British Government took their chance of Mr. Johnson's work being disowned, as his first convention was, for disregard of instructions? Does it not also lead one to think that both the British Foreign Secretaries—Lord Stanley, first, and Lord Clarendon,

afterward—must have had their eyes opened to Mr. Johnson's distorted conception of his ministerial capacity, before concluding any of the negotiations which they respectively arranged with him? In fact, can there be much doubt that, when the late Minister's whole proceedings are taken into account, our English friends must have understood Mr. Reverdy Johnson much better than he did himself?

But I pass from Mr. Reverdy Johnson's incapacity to understand his official functions, to consider the truth of his reflection upon his country's cause, that his diplomacy had gained for his Government all that it had ever asked, and that it never had a claim of its own to present.

Here I must again call Minister Johnson as a witness against himself. Lord Stanley, who kept a record of his dealings with the American envoy, as before alluded to, thus sets down the particulars of one of his earliest interviews with him:

> In a conversation which took place at the Foreign Office on the 25th of September, Mr. Johnson, after discussing with me the subject of Naturalization, passed to that of the so-called "Alabama" claims. In this conversation, of which a memorandum is inclosed, extracted from my notes of the interview, Mr. Johnson *first suggested, as a means of settlement, the payment of a lump sum of money, or a cession of territory by Great Britain*, both of which plans I considered inadmissible, so long as the question of the liability of Great Britain was denied by us, and remained undecided.—(Parl. Blue Book, *ut sup.*, p. 17.)

The memorandum referred to is given on p. 19 of the Blue Book, and is substantially to the same effect:

> The conversation then turned on the "Alabama" claims. Mr. Johnson adverted generally, though not in the form of distinct proposals, to various methods by which this question might be settled. *His first suggestion was the payment of a lump sum of money.* Lord Stanley at once declared this to be inadmissible, so long as the question of our being liable at all was denied by us and undecided by any mode of reference. *Mr. Johnson then talked of some cession of territory*, an idea which Lord Stanley did not think more promising.

I think Mr. Johnson can hardly contend that his two conventions either stipulated for the payment of "a lump sum of money," or "the cession of territory." How, then, can the United States be said "to have obtained by them all that we have ever asked"? Had not the American Minister heard from some source or other, before starting on his mission, that one or the other of these modes of settlement was expected? Or, was the suggestion entirely spontaneous, and (may it not be added) *unauthorized*, with himself? Then, does not "*cession of territory*" imply the satisfaction of a *national* demand? Or, was Mr. Johnson imagining all the while, that each one of the sufferers by the "Alabama" or the "Florida" was to take a township in Canada as an indemnity for the loss of his ship? The same

idea of cession of territory in satisfaction of these claims crops out elsewhere in the course of this correspondence. Thus, Mr. Thornton, writing to Lord Clarendon, under date of April 19th (Ib., p. 53), says, [this] "mode of settlement [that is, by cession of territory] has frequently been hinted at to me."

Whether such a form of indemnity is a desirable or expedient one for the United States, or whether indeed the cession of territory has any legitimate connection with the solution of the Alabama question at all, it is quite superfluous for the writer to undertake to settle. But, that the agitation of such a demand, and by Mr. Johnson himself, when freshly arrived in England, quite contradicts his assertions, that "we have obtained all that we ever asked," and that "the Government [of the United States] never exacted anything on its own account," seems to the writer too plain for further comment.

I hasten to the more substantial matter of the total abandonment by Mr. Johnson, and (I must add) by Mr. Seward, of the national ground of complaint against Great Britain, connected with the matter of the Belligerent Recognition of the Rebel Confederacy, and of which all tangible notice is omitted in both of the Conventions of November 10th and January 14th. Here I think every American who has gone to the bottom of the Alabama controversy will agree with me, that the United States Senate were fully justified in repudiating Messrs. Seward's and Johnson's diplomatic doings *in toto*.

How stands this point of Belligerent Recognition as left in the latest convention, and as dwelt upon in preceding negotiations which led to it? I fear that I shall have to tax the reader's patience with some explanatory details on this head; yet I believe it unavoidable to a just understanding of the merits of the discussion.

Doubtless he will have observed no allusion to Belligerent Recognition in Mr. Seward's original instructions to Mr. Johnson of July 20th, which I have already quoted: nor, I may add, am I aware that Mr. Seward ever afterward so much as alludes to the subject throughout the whole correspondence, as published in the blue books of either country. This is significant, at the outset. Yet it is the same Mr. Seward who during the course of the civil war had made no less than six formal demands as American Secretary of State upon the Governments of England and France for the recall of that obnoxious measure; and the same Mr. Seward who had a hundred times at least denounced to those Governments their hasty and unfriendly recognition of the rebels as a belligerent power, as the fountain and source of all our foreign woes. Was it intentionally kept out of

sight, or virtually ignored, in these Johnson-Stanley and Johnson-Clarendon conventions, in order to effect some arrangement which should have the *éclat* of disposing of a great international controversy?

In reply to this question, and at the same time to meet Mr. Johnson's thrust that we should have got by his convention all that we ever asked for, I beg the reader to go no further back with me into the record of Mr. Seward's complaints about the national reparation expected from England for her hasty recognition of the rebels as belligerents, than six months prior to Mr. Reverdy Johnson's confirmation as Minister. Here is what the American Secretary of State authorized Mr. Johnson's predecessor, Mr. Adams, to say to the British Government in January, 1868. I only quote an extract:

DEPARTMENT OF STATE,
WASHINGTON, Jan. 13, 1868.

SIR: Your dispatch of the 24th of December, No. 1,503, has been received. You were quite right in saying to Lord Stanley that the negotiation in regard to the so-called Alabama claims is now considered by this Government to have been closed without a prospect of its being reopened. With reference to the conversation which occurred between yourself and his lordship on the subject of a recent dispatch of Mr. Ford [British Secretary of Legation at Washington], in which Mr. Ford gave an account of a conversation which he had with me, it would perhaps be sufficient to say that Mr. Ford submitted no report of that conversation, nor did he inform me what he proposed to write to Lord Stanley. I may add that either Mr. Ford or Lord Stanley, or both, have misapprehended the full scope of what is reported by Mr. Ford as a suggestion on my part.

Both of these gentlemen seem to have understood me as referring only to mutual pecuniary war claims of citizens and subjects of the two countries which have lately been extensively discussed. Lord Stanley seems to have resolved *that the so-called Alabama claims shall be treated so exclusively as a pecuniary commercial claim, as to insist on altogether excluding the proceedings of Her Majesty's Government in regard to the war from consideration in the arbitration which he proposed.*

On the other hand, I have been singularly unfortunate in my correspondence, if I have not given it to be clearly understood, that *a violation of neutrality by the Queen's proclamation, and kindred proceedings of the British Government, is regarded as a national wrong and injury to the United States; and that the lowest form of satisfaction for that national injury that the United States could accept, would be found in an indemnity, without reservation or compromise, by the British Government to those citizens of the United States who had suffered individual injury and damages by the vessels of war unlawfully built, equipped, manned, fitted out, or entertained and protected in the British ports and harbors, in consequence of a failure of the British Government to preserve its neutrality.*

WM. H. SEWARD.

C. F. ADAMS, Esq., &c., &c.

This, I venture to think, is a very moderate and just statement of the American claim, and one which will never be substantially departed from by the country in any settlement of the question hereafter to be arranged. Had Mr. Reverdy Johnson never heard of it? Does either of his conventions recognize "*a national wrong and injury*," or provide for its "*indemnity without reservation or compromise*" "to

those who have suffered individual injury"? Let us look a little more closely at Mr. Johnson's dealings with Belligerent Recognition, since, as we have seen, Mr. Seward keeps an ominous silence in regard to it.

So far as I can find, the only mention at any time of the subject just named, on Mr. Johnson's part, occurred in one of his early interviews with Lord Stanley, prior to the signing of the convention of November 10th, and is thus reported by Lord Stanley in a dispatch to Mr. Thornton, under date of October 21st. The negotiation of the first convention, it would seem from one of Mr. Johnson's own letters, was about this time just being entered upon:

In this conversation little was said as to the point on which the former negotiations broke off, viz.: *the claim made by the United States Government to raise before the arbiter the question of the alleged premature recognition by Her Majesty's Government of the Confederates as belligerents. I stated to Mr. Reverdy Johnson that we could not, on this point, depart from the position which we had taken up; but I saw no impossibility in so framing the reference, and that by mutual consent, either tacit or express, the difficulty might be avoided.—Blue Book, ut sup*, p. 10.

As the subject is dropped from this time forth by the American envoy, so far as can be learned from the published correspondence of either Government, are we to conclude that the British proposition was at once submitted to, and that *that* Government, being no longer importuned to depart from its position, it was henceforth mutually agreed between the two negotiators to concert "how *not* to do it"? Whether such an agreement was avowedly ever entered into by them or not, it is plain that it was most effectively carried out, so far as the American Minister was concerned, by the convention of November 10th, the terms of which, so far as this point is concerned, I am about to cite. Meanwhile, I must not deprive the reader of Mr. Johnson's report of his own doings on that head to the Department of State, showing that Lord Stanley's ingenious device was, at least, not unfavorably entertained by him. Says Mr. Johnson, writing home to Mr. Seward, under date of the very day of signing the first convention (November 10th), and expressing his own gratification at what he had achieved:

It is proper that I should give, as briefly as may be necessary, my reasons for assenting to the convention, or rather to some of its provisions: 1. *You have heretofore refused to enter into an agreement to arbitrate the Alabama claims unless this Government would agree that the question of its right to acknowledge as belligerents the late so-called Southern Confederacy be also included within the arbitration. You will see by the terms of the first and the fourth articles, that that question, as well as every other which the United States may think is involved in such claims, is to be before the commissioners or the arbitrator. This is done by the use of general terms, and the omission of any specification of the questions to be decided. And my authority for agreeing to this is found in your original instructions of the 20th of July last, and is indeed to be found in the correspondence between yourself and my predecessor regarding these claims.—N. Y. Times, ut sup.*

I have already quoted the last paragraph, as above, in another connection. It deserves a repetition, however, as showing that while Mr. Johnson professed to have read and to be familiar with the instructions given to his predecessor, Mr. Adams (among which was this recent letter of January 13, 1868, instructing Mr. A. that the United States claimed a national as well as a pecuniary indemnity), Mr. Johnson believes that he can find in those instructions an *authority* (!) for *dexterously declining* to insist upon the very same demand. I pray the reader's special attention to Mr. Johnson's devise for giving the go-by to the very point which he reminds Mr. Seward that he (Mr. Seward) had always made a *sine quâ non* in arbitration.

"You will see by the terms of the first and fourth articles, that that question [Belligerent Recognition] * * * * is to be before the commissioners or the arbitrator. This is done by the use of general terms and *the omission of any specification of the questions to be decided.*" Rather a novel mode of getting a point before an arbitrator —is it not?—"*to omit all specification of the question to be decided!*" Could a better exemplification be found of the maxim, that "language is not intended to express men's ideas, but to conceal them?"

And yet, will it be believed of this brave exponent of American rights—this successful delineator of Hamlet with the part of Hamlet left out—that, writing home to the Secretary of State, in that same obnoxious letter of February 17th, from which I have so often quoted, Mr. Reverdy Johnson—after his work is all done—after he "has met the enemy *and is theirs*," and is giving his version of how it happened —could have expressed himself about the importance of Belligerent Recognition to the American case, as follows?

> Supposing, then, that the [Blockade] proclamation of the President was known to this Government [the British] when they declared the insurgents to be belligerents—a question of fact which I do not propose to examine—*it furnished no justification for the action of this Government; and if it was not justified, as I confidently believe was the case, the act is one which bears materially upon the question whether the Government is not bound to indemnify for the losses occasioned by the Alabama and other vessels, for then that vessel and the others could not have been constructed or received in British ports, as they would have been in the estimation of English law, as well as the law of nations, piratical vessels.* They never, therefore, would have been on the ocean, and the vessels and the cargoes belonging to American citizens destroyed by them would have been in safety. *Upon this ground, then,* independent of the question of proper diligence, *the obligation of Great Britain to meet the losses seems to me to be most apparent.*

Weighty and just words those! and which it is to be hoped will be remembered by our English friends when they are quoting the rest of Mr. Reverdy Johnson's record against us! But what a pity that they had not been uttered to the British Foreign Office before the two

conventions of November 10th and January 14th were signed! And still more, what a pity that they had not found a formal expression in those national compacts, instead of the ingenious device of "omitting any specification of the question to be decided"!

But I am detaining the reader too long from the text of the Convention of November 10th. Here are its three important articles, so far as they touch the "Alabama" controversy—the only reference to the claims throughout the document. Indeed, but for these it would not appear that the existence of an "Alabama," or an "Alabama" grievance, had even so much as been heard of before by the parties signitary.

ARTICLE IV.

The *commissioners shall have power to adjudicate* upon the class of claims referred to in the official correspondence between the two Governments as the "Alabama" claims; but before any of such claims is taken into consideration by them, the two high contracting parties shall fix upon some sovereign or head of a friendly State as an arbitrator in respect of such claims, to whom such class of claims shall be referred in case the commissioners shall be unable to come to an unanimous decision upon the same.

ARTICLE V

In the event of a decision on any of the claims mentioned in the next preceding article being arrived at by the arbitrator, involving a question of compensation to be paid, the amount of such compensation shall be referred back to the commissioners for adjudication; or, in the event of their not being able to come to a decision, it shall then be decided by the arbitrator appointed by them, or who shall have been determined by lot according to the provisions of Article I.

ARTICLE VI.

With regard to the before-mentioned "Alabama" class of claims, neither Government shall make out a case in support of its position, nor shall any person be heard for or against any such claim. The official correspondence which has already taken place between the two Governments, respecting the questions at issue, shall alone be laid before the commissioners; and (in the event of their not coming to an unanimous decision, as provided in Article IV.), then before the arbitrator, without argument, written or verbal, and without the production of any further evidence.

The commissioners unanimously, or the arbitrator, shall, however, be at liberty to call for argument or further evidence, if they or he shall deem it necessary.

The reader will have taken notice of the phrase used in the first line of Article IV., "*the commissioners shall have power to adjudicate*," which I have taken the liberty to italicise. While in the previous articles it is stipulated that all other claims embraced in the arbitration are to be laid unreservedly before the commissioners or arbitrator, and it is made their business to hear them, the so-called "Alabama" claims are only to be permitted an auditing, as it were, by special grace. While blockade-breakers and Confederate bondholders may

claim the commissioners' ear and enforce the most unlimited audience, the sufferers by the "Alabama" may think themselves fortunate if they get a hearing at all. Rather a descent—must not one call this?—on the 10th of November, from the American envoy's demand on the 25th of September, "of the payment of a lump sum of money," or "a cession of territory," as "a means of settlement."

And then, if the commissioners see fit to give the "Alabama" claimants a hearing at all, what sort of a hearing is this which is secured for them? "Neither government shall *make out a case* in support of its position, *nor shall any person be heard* for or against any such claim. *The official correspondence* * * * *shall alone be laid before the commissioners*, and, in the event of their *not coming to an unanimous decision*, * * * then before the arbitrator, *without argument, written or verbal, and without the production of any further evidence.*"

"The commissioners, *unanimously*, or the arbitrator, shall, however, *be at liberty* to call for argument or *further evidence, if they or he shall deem it necessary.*" Must it not have been a bad subject enough which did not bear a discussion beyond limits as narrow as these? Neither party to go to the bottom of their case, neither testimony nor argument to be heard in support of it, and an unanimous decision, or else the whole matter to be left to lot! One would think that with such a hearing as this, it was quite unnecessary to stipulate beforehand for "the omission of the specification of any question to be decided" by the arbitrator. Indeed, the leading thought uppermost in the negotiator's mind must have been, literally, that *the least heard of* the "Alabama" claims *the better.*

What possible excuse can Mr. Johnson give for such a one-sided and delusive treatment of a serious question as this, unless he was indulging the idea that he had achieved a master-stroke of policy in getting the "official correspondence of the two governments" before the eyes of the umpire? If this was to be the great equivalent, I beg to ask if the American envoy was not at all aware that *the greater part* of the American case, national and individual—as one might also say—is not contained, or not developed, in that correspondence? That, so far as public or private damage is concerned, the case of the "Florida," for instance, is hardly touched upon by it? That the facts connected with the final escape of the "Alabama" from Liverpool, through the negligence or treachery of the custom-house officials of Liverpool during the last thirty-six hours of her stay in British waters, and before finally quiting the Welsh coast—one of the strong-

est features in the American case, as I venture to think—are scarcely so much as alluded to in either Mr. Seward's or Mr. Adams' dispatches? And, that *that* correspondence is altogether silent upon the great point of the wrong inflicted upon the country, by the original concession and continued persistence in the recognition of a belligerent *status* to the Rebel Confederacy, when that confederacy had never once complied with the condition precedent upon which alone Lord Russell declared, on the 6th of May, 1861, it was granted, viz.: that the newly-acknowledged belligerents should have prize ports and prize courts? Was not Mr. Johnson aware, further, that this same official correspondence, whose efficacy he is perhaps confiding in, altogether overlooks the pertinency of the repeated admission by the British Government, during the war, of the validity and efficiency of the American blockade long before the "Alabama"—certainly long before the "Shenandoah"—was coaled, provisioned, and manned in a British outport, under the guise of a legitimate ship-of-war of a duly-recognized belligerent power?

These are but a few of the omissions such as I would ask if the American Minister was ignorant of when he was possibly laying such stress upon the efficacy of the United States official correspondence. I certainly adduce them in no spirit of fault-finding with the able and faithful exponents of our foreign relations during the late war. All things are not possible to men so overburdened with national cares as were those gentlemen, and I heartily join in the meed of praise which a grateful country has so justly conceded to them for their patriotic services at that trying period. Yet on the review of the whole work of the civil war, now that time has been given for the deliberate examination of its records, is it to be presumed that omissions like the above, and others of equal or greater importance, should have escaped the attention of the American representative, who was intrusted with the management of the national case against England? If such a presumption is not admissible, then Mr. Johnson virtually abandoned his cause in letting the official correspondence stand alike for evidence and argument—law and fact—justice and discretion—in the decision of these claims. If, on the other hand, he was ignorant of the glaring defects embraced in that presentation of our case, then his submission of it to arbitration, *upon that evidence alone,* was worse than asking for an award upon a point not specified.

I have thus dwelt at greater length upon the Convention of November 10th, than may have seemed expedient, because, as it was mainly Mr. Johnson's work (Mr. Seward, I believe, in ignorance of

its real tenor, only stipulating for the change of the seat of arbitration from London to Washington), it serves to show how little reliance is to be placed upon the American Minister's assertion, when he is turning against his country, and declaring that, as a Government, it never had any case to begin with.

The text of Mr. Johnson's Convention of November 10th reached Washington in due course of mail in about a fortnight. Shortly after its arrival, and while it was under consideration by the President and his cabinet, Mr. Johnson telegraphed to Mr. Seward for permission to go on and complete further negotiations on the "San Juan" question. The following is Mr. Seward's reply to Mr. Johnson's telegram, showing the first impression of the Secretary of State of Mr. Johnson's "Alabama" labors:

WASHINGTON, November 26, 1868.

REVERDY JOHNSON, ESQ., &c., &c.:

Let San Juan rest. Claims Convention [that is, *Alabama* Claims Convention], unless amended, is useless. Wait for dispatches, Friday or Saturday.

WM. H. SEWARD.

Mr. Seward followed this up with a letter of the next day, containing a detailed statement of objections to the treaty, and coupled with a memorandum of alterations which he deemed necessary. As I have not room for giving these documents entire, I must content my readers with the summary of them, presented a day or two after, by Mr. Thornton, to the Foreign Office, and published in the Blue Book, already quoted, p. 22.

Says Mr. Thornton, writing to Lord Stanley, November 30th:

Mr. Seward received, on the 24th instant, the Convention upon Claims, signed by your Lordship and Mr. Reverdy Johnson on the 10th instant.

On the 26th, Mr. Seward called upon me and informed me that *the contents of the convention were not in accordance with the instructions which had been given to Mr. Reverdy Johnson; that the President and his colleagues could not approve of certain of the stipulations comprised therein; and that they were unanimously of opinion that, in its present form, the convention would not receive the sanction of the Senate.* Upon the latter point I could not but concur. Mr. Seward confessed that it was possible that some excuse might be made for Mr. Johnson's not having kept more closely to his instructions, because as some of these were given by telegrams in answer to Mr. Johnson's questions sent by the same channel, Mr. Seward may have misunderstood the former, and Mr. Johnson may not have fully comprehended the instructions sent in reply. * * * Mr. Seward has pointed out to Mr. Reverdy Johnson that he had always intended, and so instructed him, that a protocol, not a convention, should be signed with regard to the "Alabama" and war claims, in the same manner, and with the same condition, as that upon the "San Juan" question. I have certainly always understood this to be the case, and I believe that my correspondence with your Lordship has given indications of this conviction on my part. * * * The United States Government likewise object *to the unanimous decision* required by Article IV. for the

"Alabama" claims, whereas the other claims may be decided by a majority of the commissioners. This they consider unjust, and are even more sensitive about it than upon the subject of the umpire. * * * *No instructions had been previously given to Mr. Johnson to make any positive declaration with regard to the "Alabama" claims, so as to distinguish them from the others.*

If Article IV. were canceled, Article V. would naturally have the same fate.

The United States Government strongly object to Article VI., *because it does not allow either Government to make out a case in support of its position, nor any person to be heard for or against the "Alabama" claims;* whereas both these steps are allowed with regard to other claims, and they do not see why a prejudicial distinction should be stipulated in the convention against the "Alabama" claims, which would render the sanction of the Senate more doubtful, although they acknowledge that little could be added to what is contained in the official correspondence. [A point upon which the writer has ventured to express his entire dissent as above.] They also object, for the reasons already mentioned, to the decision being necessarily unanimous, both with regard to the claims themselves, or to the [not?] calling for argument or further evidence. They, therefore, ask that Article VI. may be canceled, or that it may be substituted by the following words:

"In case of every claim, the official correspondence which has already taken place between the two Governments respecting the question at issue, shall be laid before the commissioners; and in the event of their not coming to a decision thereupon, then before the arbitrator; either Government may also submit further evidence and further argument thereupon, written or verbal." * * *

* * * Should your Lordship be able to agree to these modifications, Mr. Seward has repeatedly assured me that the Senate are committed to the acceptance of the convention so modified, and that he is convinced they will sanction it.

I have taken pains to cite so much from Mr. Thornton in explanation of the points of disagreement between Mr. Johnson's first convention and Mr. Seward, because, as these points were nearly all eventually conceded by the British Government in the second convention of January 14th, it puts the reader essentially in possession of the terms of that convention, and, at the same time, shows how little Mr. Johnson had conformed, in his first convention, either to the instructions or to the wishes of his own Government. This report of Mr. Thornton's, however, gives Mr. Johnson the benefit of his additional instructions *by telegraph*, which he may have misunderstood, as Mr. Seward charitably suggests, but of which Mr. Johnson himself, as we have seen, seems disposed to make but little account. This report of Mr. Thornton's suggests, further, another unpleasant feature in Mr. Seward's diplomacy, which the American *brochure* of diplomatic correspondence referred to does not disclose, I believe, viz., that the Secretary of State was undertaking to speak for, and to pledge beforehand, the concurrence of the United States Senate in his negotiations. What business, I would ask (if Mr. Thornton's report is accurate on this point), had the American Secretary of State to make any such compromising assurance as this for a branch of the Government entirely independent of his own? What did he mean by saying that

the Senate were committed to the ratification of the doings of the Executive, when he knew that a few short months before a large majority of the members of that body had voted for the removal of the President for high crimes and misdemeanors, and many of the Senators still believed his continuance in office a violation of the Constitution?

But I must hasten on to the terms of the second convention. The reader is, doubtless, familiar with Senator Sumner's vehement and effective denunciation of its shortcomings; its failure to provide for the settlement of the national grievance; its huddling-up blockade-running and Confederate bond-holding claims in the same category with unneutral and unfriendly raids upon the peaceful commerce of a friendly nation; its leaving to lot whether any indemnity, even of a pecuniary nature, should be granted to the individual sufferers; and its total disregard of the settlement of the principles of the law of nations involved in the controversy. Without troubling the reader with a repetition of the energetic and convincing statements of that now highly-famous speech on these heads, and, still more, without undertaking to enter into the general merits of some other of its much-controverted positions, I cannot forbear attempting to add a few criticisms upon the terms of the treaty, and the negotiations attending it, which seem to me to materially aid the Senator's primary and chief contention, viz., that it was equally the duty, as it was the constitutional prerogative, of the United States Senate, emphatically to repudiate the "Claims" convention of January 14th.

In the first place, I beg the reader's attention to its insufficient setting-forth of the subject-matter of the controversy. We have already seen with what bare toleration Mr. Reverdy Johnson secured any mention at all of the Alabama claims in his first treaty of November 10th.

Passing now to his second—which, it should be said in his favor, was negotiated with the full concurrence of the Secretary of State, and for which Mr. Seward took pains, in a letter dated January 20th, to express to him "the President's high satisfaction with the manner in which you have conducted these important negotiations"—it will be found that Mr. Johnson hardly stipulates for a more respectful cognizance of the same claims by the commissioners in the later than in the earlier treaty. The term "Alabama" occurs but once in the whole document, and then in a parenthetical kind of way, as if the American negotiator had been afraid to bring his bantling upon the carpet at all. While other—the most trifling or the most truculent—

claims, running back to 1853, boldly raise their heads and challenge a hearing, it is only in a secondary and subordinate capacity, introduced by the phrase, which most writers would have been likely to enclose in brackets, *e. g.* ("including the so-called 'Alabama' claims"), that the American grievance is permitted to present itself at all for arbitration. I believe the reader will not regret an opportunity of seeing this for himself in the actual document, though at the cost of a few moments' delay. I shall not have occasion, by any means, to cite the entire instrument.

The preamble to the convention runs as follows: [I quote from the parliamentary copy, p. 36.]

Whereas claims have at various times since the exchange of the ratifications of the Convention between Great Britain and the United States of America, signed at London on the 8th of February, 1853, been made upon the Government of Her Britannic Majesty on the part of citizens of the United States, and upon the Government of the United States on the part of subjects on Her Britannic Majesty; and whereas some of such claims are still pending, and remain unsettled, Her Majesty, the Queen, &c., and the President, &c., being of opinion that a speedy and equitable settlement of all such claims will contribute much to the maintenance of the friendly feelings which subsist between the two countries, have resolved to make arrangements for that purpose by means of a Convention, and have named as their plenipotentiaries to confer and agree thereupon, viz.: [The Earl of Clarendon on the part of Great Britain, and Reverdy Johnson, Esq., on the part of the United States.] Who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

[Then follows Article I., from which I need only cite a few lines to make good my purpose.]

ARTICLE I.—The high contracting parties agree, that all claims on the part of subjects of Her Britannic Majesty upon the Government of the United States, and all claims on the part of citizens of the United States upon the Government of Her Britannic Majesty, *including the so-called "Alabama" claims*, which may have been presented to either Government for its interposition with the other, since the 26th of July, 1853, the day of the exchange of the ratifications of the Convention, concluded between Great Britain and the United States of America, at London, on the 8th of February, 1853, and which yet remain unsettled; as well as any other such claims which may be presented within the time specified in Article III. of this Convention [that is, two years from the first sitting of the Commissioners], whether or not arising out of the late civil war in the United States, shall be referred to four Commissioners to be appointed in the following manner, &c.

This is all the introduction to the Commissioners' notice which the "Alabama" claims could secure throughout the document, at Messrs. Johnson and Seward's hands; and I leave it to the candid reader's judgment, whether such a mention by the way-side and in a parenthesis, as it were, of reclamations so important to the individual sufferers, and to the American people at large, looks either manly or statesmanly. I say nothing about defining what "*so-called 'Alabama'*

claims" is intended to embrace; whether, for instance, it takes in devastations by the "Florida," the "Shenandoah," and other similar vessels; though one would think that if it is so intended, it should not have been left to the generosity of our opponents to concede it, at the hearing. But what a shuffling evasion and shame faced dodging of the main issue to be tried, thus to treat it as if it were a matter not to be named; or, rather, naming it the "*so-called* 'Alabama' claims." Were not the grievances sustained by the United States and its citizens during the four long years' practice of British Neutrality and Rebel Equality worth but four words in the treaty of final settlement? Or, shall we call this another case of "wisely omitting any specification of the question to be decided"?

So far as Mr. Reverdy Johnson had any agency in providing for this lame and impotent statement of the American grievance, I think the spirit which inspired his diplomacy is well illustrated by a short extract from one of his dispatches to the Secretary of State, written after Mr. Johnson had entered upon the negotiation of the second convention with Lord Clarendon. The dispatch bears date December 24, 1868, and was dictated at a time when the Minister had digested his irritation at Mr. Seward's telegraphic repudiation of his first treaty, and when he had begun to indulge in hopeful visions of successfully negotiating a second. I quote only a short extract, which, however, will fairly bear separation from the context:

[*Johnson to Seward, December 24, N. Y. Times, ut sup.*]

I am perfectly satisfied that every member of the Cabinet is most anxious to bring the controversy in regard to the "Alabama" claims to a satisfactory termination, and I trust, therefore, that you will be able to concur substantially in the propositions which will be made in the dispatch to Mr. Thornton.

I can get the "Alabama" claims specifically mentioned as among the claims to be submitted to the Commissioners; AND THIS I THINK MOST IMPORTANT.

Wonderful! The representative of his country's rights can even get the American claims "*mentioned*" in that submission which he is about to make in perpetual foreclosure of their further prosecution! And "this he thinks most important." He does not purpose on this occasion to "altogether omit any specification of the question to be decided;" but he is so fortunate as to hope for a mention of his case in the Commissioners' hearing. Fortunate Minister! Could ambassadorial courage dare more! Could diplomatic finesse achieve a greater triumph!

More seriously, did Mr. Reverdy Johnson believe the "so-called 'Alabama' claims" a sham and a humbug? Or was he attempting to cajole his countrymen by taking such official care of their interests,

as the above, and then proclaiming to the world, in his numerous after-dinner speeches, that the "Alabama" question was settled once for all, and the good understanding of the two countries henceforth irrevocably secured?

In the second place—to continue my comments on Mr. Johnson's second convention—if the critic of this convention looks for any recognition in it, much more for any satisfaction likely to grow out of it, of that "national wrong and injury to the United States," resulting from "the violation of neutrality by the Queen's proclamation and kindred proceedings of the British Government," which we have seen was insisted upon by Mr. Seward, as late as January 13, 1868, he will find himself equally disappointed as in regard to the earlier convention of November 10th. If Mr. Johnson had never so much as heard that the United States "exacted anything on its own account"—to quote again his own language in the letter of the 17th of February—(which it should be said, again, in his favor, Mr. Seward calls "an able and elaborate paper")—how could he be expected to do otherwise than keep silence upon this head? To be sure, he says in this very same letter, that if it [the Recognition of Rebel Belligerence] was not justified, as I confidently believe was the case, the act is one which bears materially upon the question, whether the Government is not bound to indemnify for the losses occasioned by the "Alabama," [and] "upon this ground, independent of the question of proper diligence, the obligation of Great Britain to meet the losses *seems to me to be most apparent.*" If so very apparent, would it not have been worth at least a casual mention—say, for instance, as good as the parenthetical allusion to the "*so-called 'Alabama' claims*"—in a treaty which was to discharge the two countries of all shadow of animosity against each other forever?

But since Mr. Johnson is so confident that the Government of the United States "never exacted anything on its own account," and, as he says elsewhere in his letter of February 17th, "the depredations of the Alabama were of property in which our nation had no direct pecuniary interest," I should like to be informed if he never heard that one of the ships sunk by the Alabama was the United States ship of war the Hatteras—a gunboat of considerable size, seventeen of whose officers and crew were killed and drowned, and a hundred and upward of whom were made prisoners. Pray, has the United States no interest, pecuniary or national, in that act of war or piracy? Did it not cost a naval engagement also with the "Kearsarge," and the wounding of several of our seamen, to finally give the *quietus* to the "Alaba-

ma's" depredations? And, if the question is of direct pecuniary damage nationally, did not the chase of that marauding sea-rover and her kindred consorts cost the United States millions of dollars of expense, without reckoning the more remote destruction of that private commerce whose value Mr. Reverdy Johnson finds it so difficult to estimate?

Whether it is below the dignity of a great nation to make a reclamation for its governmental losses, such as those just named, sustained by the United States in its national capacity, is one thing; but that a substantial national claim on that score exists pecuniarily, should it once be thought worth while by the United States to enforce it, is as certain as that some of those destructive corsairs were negligently allowed to escape in violation of British municipal law, and that all of them were afterward treated with unneutral hospitality in British outports, in violation of the public law of nations.

But returning to Mr. Reverdy Johnson's masterly inactivity in negotiating, or rather in *not* negotiating, for a hearing of the points of belligerent recognition and national indemnity, I must not overlook an extraordinary admission of his, connected with his attempt to get them included in the second treaty, by way of a supplementary commission, as already referred to, which is reported by Lord Clarendon to the British Minister at Washington. In a dispatch to Mr. Thornton, dated March 22d (Blue Book, *ut sup.*, p. 45), Lord Clarendon writes as follows:

> Mr. Reverdy Johnson called upon me to-day to propose that an amendment, of which I inclose a copy, should be made to Article I. of the convention, as he thought it would satisfactorily meet the objections entertained by the Senate to the convention, and would secure its ratification by that body.
>
> I remarked to Mr. Johnson that his proposal would introduce an entirely new feature into the convention, which was for the settlement of claims between the subjects and citizens of Great Britain and the United States; but that the two Governments not having put forward any claims on each other, I could only suppose that his object was to favor the introduction of some claim by the Government of the United States for injury sustained on account of the policy pursued by Her Majesty's Government.
>
> Mr. Reverdy Johnson did not object to this interpretation of this amendment, but said that *if claims to compensation on account of the recognition by the British Government of the belligerent rights of the Confederates were brought forward by the Government of the United States, the British Government might, on its part, bring forward claims to compensation for damages done to British subjects by American blockades, which, if the Confederates were not belligerents, were illegally enforced against them.*

That is to say—"If you, Lord Clarendon, will be so good as to let governmental claims into the scope of the treaty, to satisfy those unreasonable United States Senators, I, Reverdy Johnson, minister plenipotentiary and envoy extraordinary of the United States of America,

will give my consent that the British Government may come upon the United States for damages for an illegal blockade of the Southern ports, in case the Confederates were not made lawful belligerents by President Lincoln's two blockade proclamations."

The same proposition, in effect, was more formally repeated by Mr. Johnson to Lord Clarendon, three days later, in writing. (Parliamentary Blue Book, *ut sup.*, p. 46, *Johnson to Clarendon*, March 25.)

Pray, what could the American Minister have been thinking of in thus suggesting arguments against his Government? Had he forgotten which nation he represented? and was he all the while supposing himself a British envoy? Or shall we say that such conduct is quite in keeping with his retorting against his Government, by way of retaliation for undervaluing his services, that it never had any case to begin with, and that it had obtained all that it had ever asked for? Is not the latest suggestion—that made to Lord Clarendon—the worst of the two? For while the former might in some degree have been palliated by wounded vanity, the latter seems a gratuitous going out of his way to furnish weapons against the nation whose interests it was his duty to protect.

And yet can the reader credit it, that when Lord Clarendon, a fortnight later, was inquiring with particularity into Mr. Johnson's authority to amend the convention, as we have already had occasion to notice in another connection, Mr. Johnson could have said about this proposition of his (which of course drew after it the apologetic suggestion of the United States being thereby made liable for all the consequences of an illegal blockade) as he did?—"*I felt myself entirely justified in making it by my instructions from the late Administration of my Government.*" (*Johnson to Clarendon*, April 9, 1869, Blue Book, *ut sup.*, p. 48.)

As one of Mr. Reverdy Johnson's American constituents, I challenge the production of a single line of instructions for any such uncalled-for concession as this, even from the administration of Andrew Johnson itself. That he cannot bring forward so much as a syllable to that effect from President Grant's administration, which alone he undertook to speak for on the 22d and 25th of March last, I venture to affirm with all possible positiveness short of actual knowledge; and until the American Minister can justify himself by some such authorization from the Executive then in office, what else can be said of his extraordinary "official" communication to the British Government, except that he had lost his head, or was intentionally abusing

his trust? I believe the former the most rational as well as the most charitable conclusion of the two, and I trust that I have said enough to persuade my reader of the same opinion.

But I pass from Mr. Reverdy Johnson's individual sayings and doings, and from the topic of Belligerent Recognition as inexcusably omitted by him (or by him and Mr. Seward jointly) from the convention of January 14th—inexcusably, at least, on their own showing—to briefly notice, *in the third place*, the equally important omission from the same State-paper of all statement of principle or recognition of national ground of indemnity to be effected by means of any award which the Commissioners or Arbitrator might afterward make under it in favor of the American private claimants.

Here I must take my text again from Mr. Seward's *dictum* of January 13, 1868, already quoted. I believe the matter will well bear a moment's further attention. Says Mr. Seward to Mr. Adams, just a year before the signing of the Johnson-Clarendon Convention, "*the lowest form of satisfaction* for that *national* injury that the United States could accept, would be found in an indemnity [I leave out the words "without reservation or compromise," for present purposes] by the British Government to those citizens of the United States who had suffered *individual* injury," etc.

Now, what satisfaction could it be of the "*national* wrong and injury," felt by the people of the United States, for British unfriendly neutrality during the civil war, that any sum of money, however large, should have accrued by a fortunate cast of the Commissioners' dice to the "Alabama" claimants, individually, so long as the Commissioners did not attempt, and in fact were not authorized, to adjudicate damages upon principle? Granting that the fortunate recipients of the indemnity would be willing to accept their money without asking whence or how it came (though most of them, I believe, would imitate Mr. George B. Upton in being willing to postpone their private remedy to the paramount claim of the public wrong), what step forward would have been accomplished by the process toward conciliating international good-will, or, still more, toward securing that future co-operation in an amended code of maritime law, which the experience of the late war has shown to be so necessary to the future peace of the two countries? Upon both of these points, but especially the latter, shall I not have the concurrence of our English friends in the propriety of the rejection of the late treaty? Are they not desirous that their money, when paid, if an Alabama indemnity is ever to be rendered (as I trust, in the interests of public law

and an advanced civilization, one shortly *will be*), that it shall be paid and accepted as a pledge of international satisfaction, and not as a mere recompense for private loss?

Thus, if a million of dollars is to be paid because of a defective observance of neutral precaution in not preventing the original escape of the "Alabama," or the "Florida," from Liverpool, or of the "Florida" from Nassau; another million because of the burning of American ships by British-built Confederate cruisers, without adjudication, contrary to that code of maritime warfare which Lord Russell announced on behalf of the British Government, at the outbreak of the Rebellion, would be insisted on from the newly-created belligerents; another million because of the admission of unneutrally-equipped privateers, or so-called public ships of war, into the ports of that neutral power which had negligently tolerated their original outfit within its own territory; and other millions or thousands, because of the violation of this or that just doctrine of international law;—if, I say, these sums of money are awarded on these respective specific grounds, *and the United States as a Government accepts the money on behalf of its citizens, thereby virtually giving a receipt in acknowledgment of the moneys being paid upon such and such a principle*—is not the transaction an infinitely more satisfactory one to the British taxpayer, than as if neither tenet of public law nor conciliation of the wounded sensibilities of a great maritime competitor had once been taken into account in the matter?

For myself, speaking as a humble member of the great American Republic, I cannot look upon the acceptance by the United States of any "Alabama" indemnity, even in the shape of pecuniary redress to individual sufferers, in any other light than as a pledge given by the country to Great Britain—perhaps to the world—that it is itself bound to make reparation on the same principles and to the same extent, to other nations, for any similar injury, national or private, which shall hereafter be brought home to its charge. In this sense, it seems to me that the adequacy of any satisfaction to be exacted and recovered by the United States, certainly on national account, is to be estimated rather by the responsibility which its acceptance draws after it, than by its absolute apparent magnitude in the first instance.

Thus, supposing the American Government were to exact and recover that enormous demand for remote and consequential damages for English intervention in the late war, which has been construed *into* rather than *out* of Senator Sumner's late speech—say to the extent of half the expenses of the war—I cannot doubt that the acceptance of

any such sum (provided it could once be collected of Great Britain by threat of war or otherwise) would pledge the former country to a responsibility which it would be altogether unwise and inexpedient to enter into. At least, if the United States are hereafter to be called into judgment upon the same principles, I do not well see how they could long avoid becoming nationally bankrupt; certainly so unless their foreign relations are hereafter to be conducted upon a system of more scrupulous precaution than has been sometimes seen to prevail.

On the other hand, if the British Government, in making any "Alabama" redress—whether unsolicited, or in compliance with an arbitrator's award—are content to adapt their indemnity to a low grade of neutral obligation, then, so far as its acceptance draws after it the corresponding obligation which I have imagined, the United States may consider themselves fortunate that they are thereby exonerated in future from this or that principle of neutral restraint which Great Britain has impliedly waived. As a lover of peace and well-wisher to civilization, I can only hope that that indemnity may cover as many principles as possible, and be large enough to fix those principles in the perpetual remembrance of both countries.

Without attempting further exposition of Mr. Seward's text of "the lowest form of satisfaction for the national injury that the United States could accept," I cannot dismiss Mr. Johnson's charge, that we have obtained all that we ever asked for, without adding my caveat against the United States being impliedly estopped from hereafter stating its case for national reparation in any different way, or to any different extent, from that which has heretofore been put forward in its official "Alabama" correspondence. Thus, supposing our late Minister's allegation to be altogether well founded, by what act or declaration have the American Government cut themselves off from demanding a just and adequate indemnity in reparation of public as well as private injuries, if such reparation is ever to be made? If, for instance, the arming and equipment of the "Florida" was not made in the first instance in the port of Mobile, as our diplomatists have tacitly conceded, but, on the contrary, in Liverpool, or, at any rate, within British jurisdiction in the Bahamas; if the equipment of the Alabama with a crew who were known to be "going down" in the steam-tug Hercules "to join the gunboat" in Beaumaris Bay near Liverpool (amounting to what Lord Russell has himself called "*going to another port in Her Majesty's dominion to ship a portion of her crew*"), has never been sufficiently dwelt upon; if the non-compliance by the rebels with the British programme of Belligerent Recog-

nition at any time during the war, and especially after the American blockade had been rendered incontrovertibly complete (a period long prior to the launching of the Alabama, the Georgia, and, much more, the Shenandoah, as British official concessions establish), has not been as yet made a part of the American grievance; if, still more, the deliberate refusal of the rebels to comply with that programme as *manifestoed* in Secretary Benjamin's "Instructions to Confederate Cruisers," published in the English Confederate official organ in London, in November or December of 1864, several weeks before the "Shenandoah" was supplied, as a regular ship of war, with the forty-five men, the two hundred tons of coal, and the extra provisions at Melbourne, which were the very means by which she afterward destroyed our whaling fleet in the North Pacific Ocean, has never yet been connected with the statement of the "Shenandoah" claims;—if, I say, these and numerous other points, of perhaps equal or even greater magnitude, have heretofore failed of their due setting forth on the national behalf, will it be contended by any one, even Mr. Johnson himself, that they may not now be justly advanced by the United States, and "listened to by the British Government, or countenanced by other nations"?

For my own part, I think that the argument might as well be made that no claim can be raised for any injury done to the United States or its citizens by the depredations of the Alabama since October 23, 1863 (nine months before she ended her career), because Mr. Adams on that day proposed to Lord Russell, under Mr. Seward's instructions, "that there was no fair and equitable form of conventional arbitrament or reference to which the United States will not be willing to submit" the question of British responsibility for the doings of that vessel. It has been British option thus far, until the late negotiations were so rashly hurried through, to keep this "Alabama" controversy open; and if the American claim *justly* grows the more it is examined and the longer its settlement is deferred, (I will not say so much the worse for England, but, as I verily believe) so much the better for civilization, and the establishment of a better code of international law. Only, for the present, let it be acknowledged that the country is to sustain no prejudice for fair dealing because of these abortive *Johnson-Stanley*, *Johnson-Clarendon* negotiations.

And this leads me to say a word, before concluding my already too extended communication, upon a topic which, as much as anything else, prompted the making of the communication at all. I mean the point last suggested, that the United States may possibly have been

wanting, in some degree, in good faith toward England, in repudiating, through the action of its Senate, a treaty which had been regularly entered into by its Minister at London, and then approved of by its Executive at Washington. This is a suggestion which is naturally brought to the notice of every American traveler in Europe, and which forces itself all the more painfully upon his attention, when he is informed that the Minister of his own Government has declared that the treaty in question concedes all that the United States has ever asked for.

The answer to this suggestion is so simple and conclusive, founded on the constitutional right and duty of the United States Senate to reject any treaty inconsistent with their views of its expediency for the interests of the country, however strongly it may have been approved of by the Executive, or agreed to by the foreign Minister, that I can promise to be very brief in making it.

Of course it would be quite superfluous to remind any intelligent American of the co-ordinate and independent power of the Senate of the United States to reject any treaty submitted to them for ratification by the President. That the President, or, much more, the Secretary of State, or any diplomatic agent abroad, cannot undertake to pledge beforehand the decision of the Senate in such a case, without being thereby guilty of the heinous official impropriety, if not of an impeachable offense, is also too well understood on the American side of the water to need a moment's elucidation. But to most Europeans, and to many Englishmen who have been accustomed only to a monarchical or imperial form of government, the idea of the treaty-making power not being exclusively vested in the Executive head of the Government, presents an anomaly such as has hardly ever before been considered.

To such, therefore, of my readers (if I shall be so fortunate as to have any), I beg to commend the following short extract from Wheaton's Commentaries on the Law of Nations, which states the case as to the Constitution of the United States in this particular so clearly as to dispose of the point at once. I would only premise that the American publicist wrote the passage more than twenty years ago, for the text of both the French and English editions of his treatise, and that, therefore, by this time, it ought to be within the knowledge of Europeans generally.

The municipal constitution of every particular State determines in whom resides the authority to ratify treaties negotiated and concluded with foreign powers, so as to render them obligatory upon the nation. In absolute monarchies it is the prerogative of the sovereign himself to confirm the act of his plenipotentiary

by his final sanction. In certain limited or constitutional monarchies, the consent of the legislative power of the nation is in some cases required for that purpose. In some republics, *as in that of the United States of America, the advice and consent of the Senate are essential, to enable the Chief Executive Magistrate to pledge the national faith in this form.* In all these cases, it is, consequently, *an implied condition in negotiating with foreign powers, that the treaties concluded by the executive government shall be subject to ratification in the manner prescribed by the fundamental laws of the State.*

Did not the two respective British Foreign Secretaries, who successively negotiated with Mr. Reverdy Johnson, know of this "implied condition" in the due ratification of any American treaty, of which Mr. Wheaton speaks? Not only were they apprised of it in due season, but, as we have seen in the limited abstract of the official correspondence which we have had occasion to make, both Messrs. Seward and Johnson were constantly calling it to the notice of the two Foreign Secretaries, by suggesting that this or that provision must be adopted in order to secure the Senatorial sanction. It has even appeared that the American Secretary of State notified the British Minister at Washington, as one of the reasons for rejecting the first convention, that in the opinion of the President and cabinet, its terms would not be satisfactory to the Senate. Whether this were according to strict official etiquette or not, can there be any doubt that the British Government were forced to give attention to this constitutional requisite in treating with the United States before entering into the second convention?

But last and most conclusive of all arguments, can any Englishman suggest any shadow of unfairness toward his country in this action of the United States Senate, in rejecting the second convention of January 14th, when in the very instrument itself, as well as in every other draft of a convention to which Mr. Johnson put his name on behalf of the United States, these words were made a part of the treaty: "*The present treaty shall be ratified* by the President of the United States, *by and with the advice and consent of the Senate thereof*"?

But notwithstanding all this, I think I hear some of our English liberal friends still objecting: "Perhaps this may be so, legally and formally, but we do not see how the American Senate could equitably and fairly accredit Mr. Reverdy Johnson to us by a unanimous vote, and then, when we strike hands with him, reject the treaty with an almost equal unanimity. It seems to us that they should have put us on our guard against giving him our confidence, and not have led us to think that they thought so differently of *him* from his namesake, the President, who had appointed him."

To which I reply: But how did the Senate know that Minister Johnson was going to run such a career as he did? Did they suppose that when he was instructed only to sound the British Government, he was about to take upon himself to settle the greatest foreign complication on the national docket? Did they suppose that Mr. Seward was going to abdicate his functions, and let the new envoy carry off the glory of composing a controversy which the Secretary of State had made it his chief study to manage for six years? Is it probable that they imagined that any settlement of the "Alabama" would be attempted by Mr. Seward himself in the dying hours of the Andrew Johnson Administration, when that administration had so recently come within one vote of being summarily deposed? Had not the British Minister at Washington attended the Impeachment proceeding? And were not his Government at home duly warned, before entering into either convention with Mr. Reverdy Johnson, that that Minister represented the most obnoxious Executive ever known to the American Republic?

If these questions are not enough to silence our murmuring English friends, I beg to ask three more:

First. Could the unanimous confirmation of Mr. Reverdy Johnson's nomination, by the United States Senate in July, have encouraged any false confidences, which were not sufficiently removed by the equally unanimous repudiation of his doings, in November, by the very administration which had originally proposed his nomination?

Secondly. If Mr. Thornton's report of the unanimous rejection by President Johnson and his cabinet of Minister Johnson's first treaty had not sufficiently opened Lord Clarendon's eyes in November, to the overweening confidence of the American envoy in the success of his mission, had not the Foreign Secretary's vision been made sufficiently clear on that point as early as April 5th—ten days before the Senate acted on the second treaty—when he notified the Minister, that "Her Majesty's Government could not consider a communication [from him] not made by the authority of the present [American] Government?

And lastly. Are the United States Senate any more to be blamed for repudiating Mr. Reverdy Johnson and his diplomacy, than was Andrew Johnson's Administration—which repudiation as we have seen was overlooked and deemed satisfactory by the British Government—or than was the British Foreign Secretary, who it seems repudiated both the one and the other, ten days sooner than the American Senate itself?

If the reader, in being kind enough to answer these questions for himself, will also kindly add, as I hope he will, that he will not trouble me for further justification of American fairness, either equitable or technical, in the matter of rejecting Mr. Reverdy Johnson's second treaty, I will relieve his much-taxed patience by only asking his favorable verdict upon the following points, which embody the chief conclusions to which my argument has tended:

(1.) That our English opponents in the Johnson-Stanley, Johnson-Clarendon negotiations were well aware, from the outset of those negotiations, that no convention, however, strongly assented to by the American Minister in London, or approved of by the American Executive at home, could become a binding treaty upon the United States, till it had been duly ratified by the consent of the American Senate.

(2.) That there was nothing in the circumstances leading to the negotiation of the second convention of January 14th, or in the tenor of that convention itself, which even impliedly forbade the exercise by the Senate of its ordinary constitutional function of rejecting any treaty deemed unsatisfactory for the national good.

(3.) That the British Government, in dealing with the Administration of Andrew Johnson—especially after November 3, 1868, when the election of General Grant to the Presidency had set the seal of popular approval upon Impeachment proceedings, or at least of condemnation upon that Administration—were sufficiently put upon notice, that any important treaty concluded with that obnoxious Executive was more than ordinarily liable to Senatorial criticism and condemnation.

(4) That the convention of January 14th was rightly rejected, on its merits, by the United States Senate, as an entirely inadequate and insufficient submission to arbitration of the American grounds of claim in the "Alabama" controversy, either public or private, collective or individual.

(5.) That the United States Senate, in rejecting that treaty, rendered a favor to the British Government, itself, in preventing the further prosecution of a scheme of settlement so defective in its statement of the subject-matter of the dispute, and so totally devoid of any recognition of principle upon which satisfaction might thereafter be awarded or accepted.

(6.) That no discredit ought to attach to the United States from the extraordinary and unfounded reflections of its late Minister respecting the rejection of that treaty; because, as we have seen, he scarcely ever

at any time comprehended the nature and extent of his own powers, or if he did, rarely complied with them; because, having his first convention set aside for a violation of instructions, he sought to amend his second by an interpolation which was, if possible, a greater breach of official propriety, and which had to be repudiated by the British Government itself; because he accompanied that attempt to save his own work from disgrace with a concession which was at once unworthy of the suggestion of an American Minister, and at the same time, so far as appears, purely of his own invention; because he convicts himself, by his own showing, of having intentionally agreed to leave out a most important part of the American claim, under the device of omitting any specification of the point to be decided; because he considered himself fortunate in getting any mention at all of the claim he represented introduced into the terms of the treaty; and, finally, because his whole ministerial treatment of the American case was no better than "*a mush of concession*," and such as it is most charitable to believe resulted rather from ignorance or misappreciation of its merits, or from failing faculties, than from a deliberate purpose to sacrifice the great interests, national and international, which he undertook to represent.

PARIS, August 20.

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